



ARIZONA STATE SENATE
Fifty-Third Legislature, First Regular Session

FINAL AMENDED
FACT SHEET FOR S.B. 1367

abortion; live delivery; report; definition

Purpose

Requires a physician performing an abortion to document and report the measures performed to maintain the life of the fetus or embryo if it was delivered alive. Outlines requirements of a physician for a fetus or embryo with a lethal fetal condition that is delivered alive after an abortion is performed.

Background

Currently, if an abortion is performed and a human fetus or embryo is delivered alive, it is the duty of any physician performing such abortion and any additional physician in attendance to see that all available means and medical skills are used to promote, preserve and maintain the life of such fetus or embryo ([A.R.S. § 36-2301](#)). A physician cannot knowingly perform an abortion of a viable fetus unless the physician uses the available method or technique of abortion most likely to preserve the life and health of the fetus, unless the use of such method or technique would present a greater risk to the life or health of the woman than the use of another available method or technique. A *viable fetus* is defined as the unborn offspring of human beings that has reached a stage of fetal development so that, in the judgment of the attending physician on the particular facts of the case, there is a reasonable probability of the fetus' sustained survival outside the uterus, with or without artificial support ([A.R.S. § 36-2301.01](#)).

Current statute requires a person, before performing or inducing an abortion, to obtain informed consent of the women on whom the abortion is to be performed or induced. In the case of a woman seeking an abortion of her unborn child diagnosed with a lethal fetal condition, except for medical emergencies, consent to an abortion is voluntary and informed only if at least 24 hours before the abortion the physician performing the abortion or the referring physician has informed the women orally and in person that: 1) perinatal hospice services are available and the physician has offered this care as an alternative to abortion; 2) the Department of Health Services maintains a website that lists perinatal hospice programs that are available both in Arizona and nationally and that are organized geographically by location; and 3) the woman has a right to review the website and that a printed copy of the materials on the website will be provided to her free of charge if she chooses to review them ([A.R.S. § 36-2158](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

Report Requirements

1. Requires that if the fetus or embryo is delivered alive the physician performing the abortion shall document and report to DHS the measures he or she took to maintain the life of the fetus or embryo.
2. Requires the physician performing the abortion, if an abortion is performed and a human fetus or embryo with a lethal fetal condition is delivered alive, to document and report to DHS the specific lethal fetal condition that was diagnosed before the performance of the abortion and that it was confirmed by an examination after the human embryo or fetus was delivered alive.
3. Requires an action to enforce these requirements to be brought in the name of the state by the Attorney General or the County Attorney in which the violation occurred.
4. Requires that all reports on each abortion performed in Arizona that are submitted to DHS include statements by the physician and all clinical staff who observed the fetus or embryo during or immediately after the abortion certifying under penalty of perjury that, to the best of their knowledge, the aborted fetus or embryo was not delivered alive.
5. Requires that the annual statistical report published by DHS include:
 - a) a breakdown of the number of abortions by gestational age of the unborn children at the time of the abortion; and
 - b) the type of procedure performed or prescribed.

Abortion Procedure

6. Requires that abortion clinics performing or inducing an abortion for a woman whose unborn child is the gestational age of 20 weeks or more meet the minimum equipment standards to assist the physician in complying with the duty to promote the life of a fetus or embryo delivered alive.
7. Requires that there be standards of care to satisfy the requirement that all available means and medical skills be used to promote the life of a fetus or embryo delivered alive.
8. Requires that the Director of the Department of Health Services (Director) prescribe the following rules for abortion clinics or hospitals that perform or induce an abortion at 20 weeks or more gestational age to comply with the duty to promote the life of a fetus or embryo delivered alive:
 - a) if a fetus or embryo is delivered alive within an abortion clinic, a person is required to contact emergency services immediately to arrange for transfer to the hospital;
 - b) at least one person trained in neonatal resuscitation must be present in the room where the abortion takes place and;
 - c) protocol for rapid neonatal resuscitation must be established to include assessing respiration and heart rate, clearing secretions, positioning the airway, providing warmth, and drying and administering oxygen.

9. Requires the physician, before performing an abortion of a human fetus or embryo diagnosed with a lethal fetal condition, to:
 - a) comply with the requirements of the informed consent law; and
 - b) inform the woman, both orally and in person, that if the fetus or embryo is delivered alive, the diagnosis must be confirmed after the delivery and the required standard of care must be given.
10. Requires no further treatment for a fetus or embryo with a lethal fetal condition that is delivered alive after an abortion if:
 - a) the protocol for rapid neonatal resuscitation is complied with; and
 - b) any further treatment will do no more than temporarily prolong the act of dying when death is imminent.

Civil Action

11. Permits the following persons who have been affected by a physician's failure to comply with the duty to promote the life of a fetus or embryo delivered alive to file a civil action to obtain relief:
 - a) the mother of the human fetus or embryo delivered alive;
 - b) the father of the human fetus or embryo delivered alive, unless the pregnancy resulted from the plaintiff's criminal conduct; and
 - c) the maternal grandparent of the human fetus or embryo delivered alive if the mother was not at least 18 years of age at the time of the abortion, unless the pregnancy resulted from the plaintiff's criminal conduct.
12. Requires that the civil action be brought in the superior court in the county where the woman the abortion was performed on resides, and allows the civil action to be based on the claim that the failure to comply with the duty to promote the life of a fetus or embryo delivered alive was a result of the following:
 - a) simple or gross negligence;
 - b) wanton, willful or intentional misconduct; or
 - c) any other legal standard of care.
13. Allows relief for a civil action to include any of the following:
 - a) monetary damages for psychological, emotional, and physical injuries resulting from the violation;
 - b) statutory damages equal to \$5,000 or three times the cost of the abortion, whichever is greater; and
 - c) reasonable attorney fees and costs.
14. Requires the civil action be initiated within six years after the violation occurred.
15. Permits that a hospital that fails to comply with the rules established by the Director is subject to penalties and sanctions as outlined.

Miscellaneous

16. Defines the following terms:

- a) *delivered alive* as the complete expulsion or extraction from a mother of a fetus or embryo, regardless of the state of gestational development, who after expulsion or extraction, whether or not the umbilical cord has been cut or the placenta attached, shows any evidence of life, including one or more of the following:
 - i) breathing;
 - ii) a heartbeat;
 - iii) umbilical cord pulsation; and
 - iv) definite movement of voluntary muscles;
- b) *abortion* as the use of any means to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will cause, with reasonable likelihood, the death of the unborn child. Abortion does not include birth control devices, oral contraceptives used to inhibit or prevent ovulation, conception or the implantation of a fertilized ovum in the uterus or the use of any means to save the life or preserve the health of the unborn child, to preserve the life or health of the child after a live birth, to terminate an ectopic pregnancy or to remove a dead fetus;
- c) *gestational age* as the age of the unborn child as calculated from the first day of the last menstrual period of the pregnant woman; and
- d) *lethal fetal condition* as a fetal condition that is diagnosed before birth and that will result, with reasonable certainty, in the death of the unborn child within three months after birth.

17. Contains legislative findings and purpose.

18. States this act does not create or recognize a right to abortion and that it is not the intention of this act to make lawful an abortion that is currently unlawful.

19. States that if a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

20. Makes technical changes.

21. Becomes effective on the general effective date.

Amendments Adopted by Committee

- Allows specified persons who have been effected by a physician's failure to comply with the duty to promote the life of a fetus or embryo delivered alive the right to file a civil action to obtain appropriate relief for the violation and outlines requirements of the civil action.

Amendments Adopted by Committee of the Whole

1. Requires the Director of the Department of Health Services to prescribe rules requiring an abortion clinic or hospital that performs an abortion at 20 weeks' gestational age or later to

establish, document and implement policies and procedures to ensure compliance with the requirements of a physician if the fetus is delivered alive and outlines what those policies and procedures should include.

2. Subjects a hospital that is not in substantial compliance with the aforementioned policies and procedures to penalties and sanctions specified in statute.

Amendments Adopted by the House of Representatives

1. Requires the civil action be initiated within 6 years after the violation occurred instead of 10 years.
2. Defines terms.
3. Outlines procedural and reporting requirements of a physician if an abortion is performed on a fetus or embryo with a lethal fetal condition and that is delivered alive.

Senate Action

HHS	2/15/17	DPA	5-2-0
3 rd Read	2/22/17		18-12-0
Final Read	3/29/17		18-11-1

House Action

JPS	3/15/16	DPA	6-3-0-0
3 rd Read	3/29/17		34-22-4

Signed by the Governor 3/31/17
Chapter 133

Prepared by Senate Research
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EM/JA/jn